

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 Vince Panesko, Eugene Butler and Futurewise,

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5 Petitioner,

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8 Lewis County,

9 Respondent.

10 And

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12 The City of Napavine, Virgil Fox, City of Toledo
13 and Cowlitz Indian Tribal Housing ,

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15 Intervenor.

Case No. 08-2-0007c

**ORDER OF CONTINUING
NONCOMPLIANCE**

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18 **I. PROCEDURAL HISTORY**

19 The Final Decision and Order (FDO) in this case was issued on August 15, 2008. Under the
20 compliance schedule established by the Board, areas of noncompliance were to be
21 addressed by February 19, 2009. In its motion for an extension of the compliance period,
22 the County stated that it had been diligently moving toward compliance.¹ The County
23 reported that it was in the process of taking steps to cure the areas of non-compliance
24 associated with its population allocated to the Birchfield fully contained community,
25 corrections to Table 4.1 of its comprehensive plan, and the Napavine UGA. The Planning
26 Commission was expected to hold a public hearing on these amendments on March 10.
27 Legislative action was anticipated by April 20, 2009.² In addition, the County reported that it
28 expected to rescind the amendment expanding the Curtis Rail Yard LAMIRD, and that the
29 Toledo UGA has been annexed by the City of Toledo and is now within the City limits of
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¹ County Motion at 1.

² Id. at 2-3.

1 Toledo and under its jurisdiction.³ Because of the additional time required for review and
2 action by the Lewis County Planning Commission and Board of County Commissioners, the
3 County requested a revised compliance schedule establishing a new compliance date of
4 April 20, 2009.

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6 On March 23, 2009 Petitioner Vince Panesko filed Objections to a Finding of Compliance.
7 As the County is not yet seeking an order finding it in compliance with the GMA, but rather
8 has sought additional time to achieve compliance, Panesko's arguments will not be
9 considered at this time. Those objections may be filed, and will be considered when the
10 County files its compliance report in accordance with the schedule set forth below.
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12 The Board denied the County's Motion for extension of time.⁴ The Board noted that while
13 the Board is able to grant extensions in the compliance schedule, RCW 36.70A.330(1)
14 requires that "After the time set for complying with the requirements of this chapter under
15 RCW 36.70A.300(b) has expired,. . . the board shall set a hearing for the purpose of
16 determining whether the state agency, county or city is in compliance with the requirements
17 of this chapter." The date set for compliance was February 19, 2009. Because the County
18 filed its request for an extension of the compliance period *after* the compliance period
19 expired, the Board could not grant an extension but instead was statutorily required to
20 conduct a compliance hearing.⁵ That compliance hearing was held telephonically on April
21 22, 2009. Present were Vince Panesko, pro se, Tim Trohimovich on behalf of Futurewise
22 and Eugene Butler, Glenn Carter on behalf of Lewis County, Andrew Lane on behalf of the
23 City of Napavine, Phil Kasin on behalf of Virgil Fox, and Ed Goodman on behalf of Cowlitz
24 Indian Tribal Housing. Board members William Roehl and James McNamara conducted the
25 hearing.
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³ Id. at 3-4.

⁴ Order Denying County's Motion for Extension of Compliance Deadline, entered March 13, 2009.

⁵ RCW 36.70A.330 requires the Board to hold a compliance hearing after the time for complying has expired.

II. DISCUSSION OF THE ISSUE

The issue before the Board is whether or not the County remains out of compliance.

The County acknowledges it has not yet achieved compliance, but instead argues that it has been diligently moving towards compliance yet needs additional time. It submitted a proposed compliance schedule with its motion for compliance extension.

At the April 22, 2009 Compliance Hearing, the County reported that it had taken action on the areas of non-compliance by April 20th, as anticipated in its Motion for Compliance Extension. It requested that it be allowed to achieve compliance in accordance with the schedule proposed in that motion, with dates subsequent to April 20th extended by one week. There was no objection to this proposal by the other parties in attendance at the compliance hearing.

As noted above, the County was ordered to come into compliance with the GMA by February 19, 2009. RCW 36.70A.300(3) provides that the Board shall specify a reasonable period of time, not in excess of 180 days, within which the jurisdiction must comply with the requirements of the GMA. However, the Board may grant a longer period in cases of unusual scope and complexity. Based on the history of this case, the tasks of population allocation and UGA boundary determination constitute a case of unusual scope and complexity. The Board will therefore grant the County additional time to achieve compliance as requested in its earlier motion.

The relevant Findings of Fact and Conclusions of Law set forth in the August 15, 2009 FDO are incorporated herein by reference. The Board's earlier order of invalidity remains in place.

III. ORDER

Lewis County shall take the necessary legislative action to comply with the GMA as set out in the Board's August 15, 2008 FDO in accordance with the following schedule:

Compliance Due	April 20, 2009
County's Report of Action Taken Due with Index	May 4, 2009
Additions to Index Due	May 11, 2009
Written Objections (if any) to a finding of compliance	May 26, 2009
County's Response (if necessary) to any Objections to Compliance Due	June 15, 2009
Compliance Hearing (location to be determined)	July 7, 2009

Entered this 24th day of April, 2009.

James McNamara, Board Member

William Roehl, Board Member